

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

YODI MYERS,	)	
	)	
Claimant,	)	<b>IC 02-012341</b>
	)	<b>IC 03-010750</b>
v.	)	
	)	
VARSITY CONTRACTORS,	)	
	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Employer,	)	<b>AND RECOMMENDATION</b>
and	)	
	)	
TRANSPORTATION INSURANCE COMPANY,	)	FILED OCT 4 2004
	)	
Surety,	)	
Defendants.	)	
	)	

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Pocatello on April 8, 2004. Jonathan M. Volyn represented Claimant. Alan K. Hull and Justin P. Aylsworth represented the Defendants. The parties presented oral and documentary evidence. They took posthearing depositions and submitted briefs. The case came under advisement on July 12, 2004. It is ready for decision.

**ISSUES**

As modified and agreed upon by the parties at hearing, the issues to be resolved are:

1. Whether Claimant is medically stable and, if so, the date thereof;
2. Whether and to what extent Claimant is entitled to the following benefits:
  - (a) permanent partial impairment (PPI);
  - (b) disability in excess of impairment (PPD);
  - (c) medical care; and
  - (d) attorney fees.

## **CONTENTIONS OF THE PARTIES**

Claimant, a part-time janitor, alleges that she sustained a back injury on June 19, 2002, while working for Employer. She asserts continuing pain. Claimant relies on the opinion of Eric C. Roberts, M.D., her treating physician, and contends that she has not reached maximum medical improvement. Thus, it is impossible to determine permanent partial impairment and disability at this point in time. Moreover, Claimant is entitled to further medical care. Finally, she should be awarded attorney fees.

Defendants agree that Claimant had a work-related back injury. However, Defendants - relying on the opinions of Rheim B. Jones, M.D., and Rodde Cox, M.D. - assert that Claimant has reached maximum medical improvement, has suffered no permanent impairment, and does not require further medical care. Also, Defendants rely on vocational expert Douglas N. Crum and allege that Claimant is not entitled to disability. Defendants assert they have not acted unreasonably.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, private investigator Jayson Obermiller, field investigator Kevin Mansfield, and Mr. Crum;
2. Claimant's Exhibits A through J, exclusive of J-2, 3, 12, and 15, admitted at hearing;
3. Defendants' Exhibits 1 through 26, 22-A and 29 admitted at hearing; and
4. The post-hearing depositions of claims examiner Leslee Haylett, Dr. Roberts, and Dr. Cox.

After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

## **FINDINGS OF FACT**

1. Claimant had worked for Employer for approximately two and a half years prior to her work-related injury. Claimant did not have a back injury prior to June 2002 and has had no back injury since. Claimant did have knee problems and went to Dr. Wathne. Physical therapy notes show that Claimant often complained of “mild” pain in both knee and low back. Claimant alleged that the low back pain was due to the exercises that she was doing for her knee and not to a separate low back issue. When Claimant stopped doing her knee exercises, the low back pain ceased.

2. On June 19, 2002, while at work, Claimant lifted a 55-gallon can filled with books. She heard a “pop” and felt back pain. After finishing work on June 19, 2002, Claimant went to the Pocatello Regional Medical Center Emergency Room (ER). The ER doctor prescribed medication and told her to keep working. Claimant continued working the 12 to 15 hours per week as she had before her injury. Later, she was referred to physiatrist Eric Roberts, M.D.

3. Dr. Roberts became Claimant’s treating physician in July 2002. He recommended injection therapy, physical therapy and a lifting restriction. He let her return to work under the light-duty category – no lifting over 20 pounds. Employer accommodated Claimant by providing light-duty work.

4. A CT scan showed mild to moderate spinal stenosis at L4-5 with mild disc bulges at L3-4 and L5-S1. Because an MRI was contraindicated by the presence of Claimant’s heart pacemaker, Dr. Roberts prescribed a CT myelogram.

5. On September 18, 2002, Dr. Roberts noted continuing back pain but improvement resulting from her physical therapy. He recommended she continue her light-duty work.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3**

6. On October 16, 2002, Dr. Roberts examined Claimant. He recommended she continue with her physical therapy program, TENS therapy, and light-duty work.

7. On October 21, 2002, at the request of Surety, orthopedic surgeon Rheim B. Jones, M.D., evaluated Claimant. In his report, Dr. Jones opined Claimant was medically stable as of that date and that she suffered no PPI. He further opined that Claimant needed no further medical treatment and could return to work immediately with a 50-pound weight restriction.

8. On November 4, 2002, Dr. Roberts expressed disagreement with Dr. Jones' findings. He opined Claimant showed evidence of radiculopathy. He reiterated his opinion that a CT myelogram was necessary.

9. Surety paid Claimant's other medical bills for a time, but denied authorization for the CT myelogram.

10. On February 10, 2003, Dr. Roberts opined Claimant's condition was related to her work accident. He reiterated his opinion that a CT myelogram was necessary.

11. Claimant moved to Boise in September 2003. She had difficulty obtaining medical care.

12. On February 2, 2004, Rodde D. Cox, M.D., performed a second evaluation at Defendants' request. He opined Claimant had not reached maximum medical improvement. Dr. Cox opined her condition unready for a permanent impairment rating. He agreed with the suggested 50-pound weight restriction. He agreed with Dr. Roberts that a CT myelogram was indicated. Dr. Cox opined that if those myelogram findings "warrant surgical intervention," then he would recommend a formal evaluation by a pain psychologist before any surgery is undertaken. He opined Claimant to be a "poor surgical candidate."

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4**

13. Video surveillance depicted Claimant helping her husband unload a box from the back of a pickup onto the ground. It showed her walking and driving.

14. After viewing the videotapes of Claimant, Dr. Cox changed his opinion. He opined she “moves very fluidly and fluidly bends at the waist.” He opined her range of motion displayed on the video was inconsistent with what she displayed during his examination.

15. Dr. Roberts viewed the videotapes. He opined they did not show Claimant exceeded her restrictions. He opined Claimant’s movements shown did not alter his opinions about her condition. Once again, Dr. Roberts recommended a CT myelogram.

16. On March 30, 2004, Mr. Crum opined Claimant suffered no permanent disability.

#### **DISCUSSION AND FURTHER FINDINGS**

17. From the record available, it is unclear whether Claimant is medically stable or to what extent her condition was caused by the industrial accident. It is clear that a CT myelogram could resolve this doubt. Surety’s refusal to authorize a CT myelogram resulted in an obfuscated record.

18. Claimant is entitled to a CT myelogram. Whether Claimant is or has been stable since October 21, 2002, will depend primarily upon what the CT myelogram shows.

19. The extent of Claimant’s PPI and permanent disability cannot yet be determined. The video surveillance, by itself, is not helpful. Dr. Cox finds Claimant’s motions depicted on it to be inconsistent with his evaluation. Dr. Roberts does not. Again, the weight to be assigned to various medical opinions cannot fully be determined without the result of the CT myelogram.

20. Attorney’s fees are not granted to a claimant as a matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5**

Idaho Code §72-804. Here, Defendants were not shown to have unreasonably relied upon their experts when they denied benefits.

### **CONCLUSIONS OF LAW**

1. Claimant sustained a back injury at work on June 19, 2002.
2. Claimant is entitled to a CT myelogram of the lumbar spine.
3. Issues of stability, PPI, and disability are not yet ripe for determination.
4. Claimant is not entitled to attorney fees based upon Defendants' actions prior to the date of the hearing.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 23<sup>RD</sup> day of SEPTEMBER, 2004.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>TH</sup> day of OCTOBER, 2004, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Jonathan M. Volyn  
P.O. Box 2196  
Pocatello, ID 83206-2196

Alan K. Hull  
Justin P. Aylsworth  
P.O. Box 7426  
Boise, ID 83707

db

/S/ \_\_\_\_\_